

REMARKS

The present amendment is submitted in response to the Office Action received from the Patent Office dated November 19, 2007. In the Office Action, the Patent Office rejected Claims 3, 14 and 15 under 35 U.S.C. §112 , first paragraph as failing to comply with the enablement requirement. Moreover, the Patent Office has rejected Claims 3 and 14 under 35 U.S.C. § 101 indicating these claims are inoperative and therefore lack utility. As to Claim 14, the Patent Office has rejected under 35 U.S.C. § 102(b) as being anticipated by Finley et al (United States Patent Number: 6,313,545). Finally, the Patent Office rejected Claims 3-5, 7-13 and 15 under 35 U.S.C. §103(a) as being unpatentable over *Finley et al.* '545 (Fig. 14) in view of *Finley et al.* '545 (Fig. 9).

By the present amendment, Applicant amends Claim 3, 4 and 14 . Applicant submits that the amendments and accompanying remarks overcome the rejections and objections to the claims by the Patent Office.

The Patent Office rejected Claims 3, 14 and 15 under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement. The Patent Office rejection of Claims 3 and 14 under 35 USC § 101 as being inoperative and lacking utility. The Claims 3 and 14 call for the “baffle” to be sized or configured in order for the discharge flow rate to remain substantially independent of the water depth. Claim 15 also calls for the riser to have openings sized or positioned such that the discharge flow rate remains substantially independent of the water depth. The disclosure clearly fails to enable one skilled in the art to make and/or use the invention as claimed. How can the flow rate independent of water depth? This is contrary to fluid mechanics. For example, $Q = AV$, wherein Q is the flow rate, A is the area of opening and V is the velocity. The velocity is directly related to h or water depth. Therefore, one skilled in the art cannot make and/or use the invention as claimed.

Applicant respectfully disagrees with the examiner. However, to avoid confusion, the applicant has amended the claims to remove references to “the discharge flow rate remains substantially independent of the water depth.” The applicant respectfully submits that the

amendments overcome the rejections to the claims. Notice to that effect is requested.

The Patent Office rejected Claims 3 and 14 under 35 U.S.C. §101 as lacking utility because these claims call for the “baffle” to be sized or configured in order for the discharge flow rate to remain substantially independent of the water depth. Applicant has amended Claim 3 and 15 to remove said references. Applicant respectfully requests that the examiner withdraw the rejection.

The Patent Office further rejected Claim 14 under 35 USC § 102(b) as being anticipated by *Finley, et al.* (US 6313545). The Patent Office states that *Finley et al.* discloses a flow limiting inlet structure (see Fig. 14) comprising a discharge riser (this is considered member (20) which discharges fluid) surrounded by a tiered set of nested baffles (40 wherein an inlet area of the set increases as fluid depth increases).

In an communication with the Examiner on November 3, 2005 between the examiner and counsel for the applicant, Mr. Anthony King, the Examiner agreed that rejection based on *Finley et al.* would be withdrawn because the outlet as disclosed in the Finley device does not direct water out of the basin. On the contrary, water is introduced into the device via a down tube 22. This communication is memorialized in the applicant’s last response to the Office Action dated September 21, 2005. Yet, the Examiner again made no reference to this communication and again re-asserts the same rejections that were previously presented in older Office Actions. Applicant respectfully requests that the examiner please take note of these communications and discontinue making the same rejections after he has agreed that the prior art references have been overcome.

The Patent Office has not presented any evidence or made any showing that a new ground for rejection has been illustrated. As was discussed between the applicant and the Patent Office, *Finley et al.* does not teach a device that directs water out of the basin. On the contrary, *Finley et al.* teaches introduction of water into the device via a down tube 22. These are completely different functionalities that the Examiner previously agreed to withdrawing. Yet here again, is the same rejection without any additional reasoning for the same rejections. The need to add a structural element to distinguish is not a burden to be placed on the applicant, but rather the patent office must make a showing that these are in fact the same structural elements. The Patent Office only points to a Figure to illustrate its point. Nowhere in the Finley patent does it discuss the same structural elements, but rather refers only to a down tube 22.

Additionally, Claim 14 requires a flow limiting inlet structure comprising a discharge riser surrounded by a tiered set of nested baffles wherein an inlet area of the set increases as fluid depth increases, and at least one baffle having an upper edge defining an upper opening allowing water to flow through and further wherein each baffle is sized or configured such that a discharge rate through an outlet is controlled and complete settlement of suspended sediments is achieved.

Applicant respectfully requests that the Patent Office reconsider its rejection and to withdraw the rejection of Claim 14 and its dependent claims. Notice to that effect is requested.

Under 35 U.S.C. §102(b), anticipation requires that a single reference disclose each and every element of Applicant's claimed invention. *Akzo N.V. v. U.S. International Trade Commission*, 808 F.2d 1471, 1479, 1 USPQ 2d 1241, 1245 (Fed. Cir. 1986).

Moreover, anticipation is not shown even if the differences between the claims and the reference are "insubstantial" and one skilled in the art could supply the missing elements. *Structure Rubber Products Co. v. Park Rubber Co.*, 749 F.2d 707, 716, 223 USPQ 1264, 1270 (Fed. Cir. 1984).

In view of the foregoing remarks and amendments, the rejection of Claim 14 under 35 U.S.C. §102(b) as being anticipated by *Finley et al.* has been overcome and should be withdrawn. Notice to that effect is requested.

The Patent Office further rejected Claims 3-5, 7-13 and 15 under 35 U.S.C. §103(a) as being unpatentable over *Finley et al.* in view of *Finley et al.* Claims 3-5, 7-13 and 15 are rejected under 35 USC § 103(a) as being unpatentable over *Finley et al.* '545 (Fig. 14) in view of *Finley et al.* '545 (Fig. 9). *Finley et al.* (Fig. 14) discloses a flow limiting inlet structure (see Fig. 14) comprising a tiered set of one or more baffles (40) coupled to an outlet (this is considered as the horizontal portion of member 20 in addition to a little of the vertical portion of member 20 within member 30 as depicted in Figure 14), a discharge riser (this is considered as the rest of the vertical portion of member (20) within member 40 as depicted in Fig. 14) However, *Finley et al.* (Fig. 14) is silent about the riser (this is considered as the rest of the vertical portion of member (20) depicted in Fig. 9 having a plurality of opening (110)). It would have been considered obvious to one of ordinary skill in the art to modify *Finley et al.* (Fig. 14) to include the riser with a plurality of openings as taught by *Finley et al.* (Fig. 9) since this would be a design choice to use a power generator as taught by Figure 9.

Again, Amended Claim 3 of the present invention a flow limiting inlet structure that has a tiered set of one or more baffles coupled to an outlet; wherein each of the baffles has a upper edge and a lower edge wherein each baffle surrounds a discharge riser, the set adapted to inhibit flow of surface materials through the baffle set, wherein the inlet area of the baffle set increases as fluid depth increases. Moreover, amended Claim 3 requires an upper edge that defines a first opening and the lower edge defines a second opening and wherein each baffle is sized or configured such that a discharge rate of fluid through the outlet remains substantially autonomous of water depth about the inlet structure and further wherein a plurality of holes are provided in the structure to allow for discharge of the fluid into the outlet.

However, *Finley et al.* does not teach or suggest wherein each baffle surrounds a discharge riser, the set adapted to inhibit flow of surface materials through the baffle set, wherein the inlet area of the baffle set increases as fluid depth increases as required by Claim 3. Moreover, *Finley et al.* does not teach or suggest a flow limiting inlet structure comprising a discharge riser surrounded by a tiered set of nested baffles wherein an inlet area of the set increases as fluid depth increases, and at least one baffle having a upper edge defining a upper opening allowing water to flow through and further wherein the discharge riser has openings sized or positioned such that a discharge rate through a outlet is controlled and complete settlement of suspended sediments is achieved as required by Claim 15.

It is submitted that the question under §103 is whether the totality of the art would collectively suggest the claimed invention to one of ordinary skill in this art. In re Simon, 461 F.2d 1387, 174 USPQ 114 (CCPA 1972).

That elements, even distinguishing elements, are disclosed in the art is alone insufficient. It is common to find elements somewhere in the art. Moreover, most if not all elements perform their ordained and expected functions. The test is whether the invention as a whole, in light of the teaching of the reference, would have been obvious to one of ordinary skill in the art at the time the invention was made. Connell v. Sears, Roebuck & Co., 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983).

It is insufficient that the art disclosed components of Applicants' invention. A teaching, suggestion, or incentive must exist to make the combination made by Applicants. Interconnect Planning Corp. v. Feil, 774 F.2d 1132, 1143, 227 USPQ 543, 551 (Fed. Cir. 1988).

In view of the foregoing remarks and amendments, the rejection of Claims 3-5, 7-13 and 15 under 35 U.S.C. §103(a) as being unpatentable over *Finley et al.* in view of *Finley et al.* has been overcome and should be withdrawn. Notice to that effect is requested.

Request For Allowance

In view of the foregoing remarks, Applicant respectfully submits that all of the claims in the application are in allowable form and that the application is now in condition for allowance. If any outstanding issues remain, Applicant urges the Patent Office to telephone Applicant's attorney so that the same may be resolved and the application expedited to issue. Applicant requests the Patent Office to indicate all claims as allowable and to pass the application to issue.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read 'Hani Z. Sayed', is written over a horizontal line.

Hani Z. Sayed
Registration No. 52,544

Rutan & Tucker
611 Anton Blvd., 14th Floor
Costa Mesa, CA 92626-1931
Telephone (714) 641-5100
Fax (714) 546-9035